

Report to the Ethical Standards and Member Development Committee

7 March 2023

Subject:	National Cases
Director:	Director Law and Governance and Monitoring Officer - Surjit Tour
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1 Recommendations







- 1.1 That the Ethical Standards and Member Development Committee considers the contents of the Local Government and Social Care Ombudsman report and the cases included in the appendices and consider any issues for the Council.

2 Reasons for Recommendations

- 2.1 Officers will inform the Ethical Standards and Member Development Committee about issues arising from local investigations and case law to add to learning at the local level and enhance understanding of ethical standards.



3 How does this deliver objectives of the Corporate Plan?

		High standards of conduct are an essential part of good corporate governance and this in turn has a direct relationship with the delivery of high quality services.
		
		

4 Context and Key Issues

- 4.1 Within its terms of reference, the Ethical Standards and Member Development Committee has a duty to promote high ethical standards amongst Members. As well as complying with legislation and guidance, the Committee will need to demonstrate learning from issues arising from local investigations and case law. Furthermore, it is advisable for the Committee to be kept informed of any particularly notable cases which are publicised as they may also add to learning at the local level.

5 Alternative Options

- 5.1 The purpose of the report is for the Ethical Standards and Member Development Committee to promote high ethical standards amongst Members through learning from local investigations and case law. As such, there are no alternative options.



6 Implications

Resources:	There are no resource implications arising from this report.
Legal and Governance:	By considering national cases of significance the Ethical Standards and Member Development Committee will be better informed and placed to discharge its duty to promote high ethical standards.
Risk:	Awareness of national cases will enhance the Ethical Standards and Member Development Committee's understanding of promoting high ethical standards within its duties.
Equality:	There are no direct equality implications arising from this report.
Health and Wellbeing:	There are no direct implications for health and wellbeing from this report.
Social Value	This report contains no social value implications.

7. Appendices

Appendix 1 – Extract from the Local Government and Social Care Ombudsman newsletter

Appendix 2 – Extract taken from <https://www.maidenhead-advertiser.co.uk/gallery/maidenhead/183428/tory-councillor-ross-mcwilliams-will-not-stand-at-next-election.html> Dated 2 February 2023.

Appendix 3 - Extract taken from <https://www.cornwalllive.com/news/cornwall-news/cornwall-councillor-colin-martin-censured-8103884> Dated 2 February 2023.

8. Background Papers

No background papers.



Council investigation into local councillor's conduct flawed



Councils need to ensure standards investigations into the actions of councillors are conducted fairly and properly.

We have issued a [report about the way Teignbridge District Council investigated the actions of a councillor](#) after the council alleged he had acted contrary to its Code of Conduct.

Who should read this report?

- Monitoring officers who are responsible for the council's standards complaints investigation processes.
- Council officers who deal with complaints about the conduct of local councillors.
- Local councillors who sit on standards committees.

What happened?

We found fault with a number of aspects of the council's investigation. We found the investigation was not prompted by a formal written complaint and was contrary to the law. The council also failed to give the councillor enough information about his alleged breaches of its Code.

The council introduced new allegations during the process, but the independent investigator appointed to look at the case did not make it clear to the councillor whether these were part of the investigation.

We also found the inquiry into the councillor's conduct was conflated with accusations levelled at another councillor who was being investigated at the same time.

The council failed to reflect on the investigation and consider whether due process had been followed after the councillor raised legitimate concerns about the way the investigation was being carried out. It also failed to consider the councillor's enhanced right to free speech as an elected representative, which was relevant when the council considered his justification for certain comments he acknowledged making or posted on social media.

We have made a number of recommendations to improve the council's processes following the investigation, but the council has not yet agreed to accept these.

Michael King, Local Government and Social Care Ombudsman, said:

"Local councillors have a key role in scrutinising their authorities' actions, and have an enhanced right of free speech to ask what might at times appear to be uncomfortable questions. Councils need to bear this in mind when deciding what constitutes a breach of their Code of Conduct."

"While both officers and members have a right to be treated with dignity and respect at work, and councils' desire to do more to protect them from poor treatment is to be encouraged, they still need to carry out investigations into councillor standards fairly and properly."



"I look forward to the council considering my report at a senior decision-making level and hope it accepts the recommendations I have made to improve its processes and procedures."

Can the Ombudsman investigate complaints from councillors?

We can investigate complaints from locally elected councillors where they allege they have suffered a personal injustice because of actions taken by a body in our jurisdiction. This is because where a councillor makes a complaint of this type, they are not doing so on behalf of the council or another public body, but in their own personal capacity. They are also not an employee, governed by a personnel relationship with a council, where there are legal limits on what we can investigate.

What can your council learn from this?

In the report we recognise that councils have a responsibility to protect the wellbeing of officers. This includes protecting them from overly critical comments from local councillors. However this needs to be balanced against a local councillor's right to freedom of expression which includes legitimate questioning and criticism of a council's actions.

We have recommended Teignbridge District Council has a written procedure for officers and any independent investigators asked to consider standards complaints that should include:

- having a record of complaints being made in writing;
- having a clear written record of consultation with an Independent Person to include their response;
- recording when the written complaint has been shared with the councillor complained of, or a clear written record as to the reasons why not;
- ensuring that where an investigation expands to consider further allegations arising during the investigation, it keeps a clear written record of and a record that this has been explained to the councillor complained about; and
- that in all appropriate cases it considers the rights of the councillor complained about to free expression under Article 10 of the Human Rights Act, as part of any investigation report and subsequent committee decision making.

Further information

In the report we said the council had failed to have regard to the local councillor's right to freedom of expression.

We have issued a [report on human rights](#) which explains why it is important that councils treat the people they serve with fairness, respect and dignity. This contains important guidance on how councils should consider human rights when delivering services as well as guidance for local councillors responsible for scrutinising the way councils carry out their functions.



Tory councillor Ross McWilliams will not stand at next election

A Conservative councillor who has been embroiled in controversy over his role in a contentious planning application will not be standing at the next election.

Cox Green representative Ross McWilliams, who is on the council's cabinet, was found to have breached the council's code of conduct in August following complaints in relation to his conduct before and during a Maidenhead development management committee on November 17, 2021, which considered proposals for 80 homes in Ray Mill Road East.

The Tory councillor voted to defer CALA Homes' planning application for approval but faced complaints from opposition councillors who said he should have declared that he worked for BECG, a company which provided communications for the developer.

Cllr McWilliams was found to have breached the code of conduct by 'bringing his role and local authority into disrepute' over the controversy but faced no further sanctions due to his actions being a result of his 'passion for affordable housing'.

He was cleared of two other complaints: a breach of requirement to disclose interests and 'using his position improperly to the advantage of himself and others'.

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Cornwall councillor Colin Martin censured for failing to apologise for social media post

A councillor has been censured for failing to apologise after breaking Cornwall Council's code of conduct with a series of social media posts. Colin Martin was found to have breached the code last year after a number of comments criticising council Cabinet member Andy Virr.

A complaint was made against Cllr Martin concerning a post on Facebook which the complainant, Cornwall councillor Peter Guest, claimed suggested that he was criticising Cllr Virr's ability to do his job as a consultant at Royal Cornwall Hospitals Trust. Cllr Guest claimed that the social media post had been "insulting" towards Cllr Virr.

The council's monitoring officer ruled that Cllr Martin had breached the code and ordered him to apologise on the same social media platform. However, Cllr Martin failed to do so within the time period allowed and so the issue was brought to the council's standards committee today to determine what action should be taken.

At the meeting Cllr Martin said that he did not believe he had anything to apologise for as he did not believe that he had made the comment which was the subject of the complaint. The Liberal Democrat councillor said that he believed he had commented on the ability of a Cabinet member to do two jobs rather than Cllr Virr's ability to do his work as a hospital consultant.

And Cllr Martin told the meeting he had posted on his Facebook page to make that clarification. It states: "I have no opinion whatsoever on Dr Virr's performance as an NHS employee. My criticism of Cllr Virr relates entirely to his performance as a Cabinet member."

Cllr Martin said that he had wanted to challenge the ruling last year but thought that he had 28 days to do so when in fact he only had 14 days to appeal. By the time he had made his decision that 14 days had expired.

However, he told the committee that he would not have been able to appeal the decision anyway as to do so he would require new evidence and he had wanted to challenge it on the grounds that the monitoring officer had made an error in their interpretation of his comments.



Cllr Martin said that when he had previously been challenged over comments made in the council chamber which were thought to have gone too far he had apologised both in writing and in the chamber at the next full council meeting.

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